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Attorneys for Defendants
UBER TECHNOLOGIES, INC.
and OTTOMOTTO LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DEFENDANTS UBER
TECHNOLOGIES, INC. AND
OTTOMOTTO LLC'S
ADMINISTRATIVE MOTION TO
FILE UNDER SEAL THEIR
RESPONSE TO WAYMO'S PRECIS
IN SUPPORT OF ITS REQUEST TO
FILE A MOTION FOR RELIEF
BASED ON DEFENDANTS'
LITIGATION MISCONDUCT**

Pursuant to Civil Local Rules 7-11 and 79-5, Defendants Uber Technologies, Inc. and Ottomotto LLC (“Defendants”) submit this motion for an order to file under seal their Response to Waymo’s Precise in Support of Its Request to File a Motion for Relief Based on Defendants’ Litigation Misconduct (“Response”) and the accompanying exhibits to the Declaration of Camila Tapernoux (“Tapernoux Decl.”). Defendants file under seal the below documents in accordance with Paragraph 14.4 of the Protective Order, but do not believe the Response or Exhibits F, G, or H contain sealable information from Plaintiff.

Document	Portions to Be Filed Under Seal	Designating Party
Response	Highlighted Portions	Plaintiff
Tapernoux Decl. Ex. F	Entirety	Plaintiff
Tapernoux Decl. Ex. G	Entirety	Plaintiff
Tapernoux Decl. Ex. H	Entirety	Plaintiff
Tapernoux Decl. Ex. J	Highlighted Portions	Defendants
Tapernoux Decl. Ex. M	Highlighted Portions	Defendants

Defendants do not believe the green-highlighted portions of the Response or Exhibits F, G, or H merit sealing, but Waymo designated this material “Highly Confidential – Attorneys’ Eyes Only.” Defendants file this material under seal in order to provide Waymo the opportunity to justify sealing pursuant to Local Rule 79-5, but oppose any attempt to seal this information. (Declaration of Michelle Yang in Support of Defendants’ Administrative Motion to File Documents Under Seal (“Yang Decl.”) ¶ 3.)

The blue-highlighted portions of Exhibits J and M contain highly confidential information concerning the identity of certain third party competitors, specific research objectives, financial numbers regarding research budgets, and confidential business negotiations. This information has been maintained as confidential. Disclosure of this information would allow competitors to understand Uber’s business strategy in the self-driving industry, including what information Uber has and does not have, to the detriment of Uber’s competitive standing. (Yang Decl. ¶ 4.)

1 The blue-highlighted portions on page 38 of Exhibit J and page 208 of Exhibit M contain
2 references to a confidential third party vendor Uber used to conduct open-source research.
3 Defendants request this information be sealed to protect this confidential business relationship
4 from disclosure and this third party vendor from possible harassment. (Yang Decl. ¶ 5.)

5 Defendants' request is narrowly tailored to portions that merit sealing. (Yang Decl. ¶ 6.)

6 Pursuant to Civil Local Rule 79-5(d)(2), Defendants will lodge with the Clerk the
7 documents at issue, with accompanying chamber copies.

8 Defendants served Waymo with this Administrative Motion to File Documents Under
9 Seal on January 14, 2018.

10 For the foregoing reasons, Defendants request that the Court enter the accompanying
11 Proposed Order granting Defendants' Administrative Motion to File Documents Under Seal and
12 designate the service copies of these documents as "HIGHLY CONFIDENTIAL –
13 ATTORNEYS' EYES ONLY."

14 Dated: January 14, 2018

MORRISON & FOERSTER LLP

15
16 By: /s/ Arturo J. González
17 ARTURO J. GONZÁLEZ

18 Attorneys for Defendants
19 UBER TECHNOLOGIES, INC. and
20 OTTOMOTTO LLC
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF
MICHELLE YANG IN SUPPORT OF
DEFENDANTS' ADMINISTRATIVE
MOTION TO FILE UNDER
SEAL THEIR RESPONSE TO
WAYMO'S PRECIS IN SUPPORT OF
ITS REQUEST TO FILE A MOTION
FOR RELIEF BASED ON
DEFENDANTS' LITIGATION
MISCONDUCT**

I, Michelle Yang, declare as follows:

1. I am an attorney at the law firm of Morrison & Foerster LLP. I make this declaration based upon matters within my own personal knowledge and if called as a witness, I could and would competently testify to the matters set forth herein. I make this declaration in support of Defendants' Administrative Motion to File Under Seal Their Response to Waymo's Precip in Support of Its Request to File a Motion for Relief Based on Defendants' Litigation Misconduct ("Response") and the accompanying exhibits to the Declaration of Camila Tapernoux ("Tapernoux Decl.").

2. I have reviewed the following documents and confirmed that only the portions identified below regarding Exhibits J and M merit sealing. The portions of the Response and Exhibits F, G, or H identified below do not contain sealable information from Plaintiff:

Document	Portions to Be Filed Under Seal	Designating Party
Response	Highlighted Portions	Plaintiff
Tapernoux Decl. Ex. F	Entirety	Plaintiff
Tapernoux Decl. Ex. G	Entirety	Plaintiff
Tapernoux Decl. Ex. H	Entirety	Plaintiff
Tapernoux Decl. Ex. J	Highlighted Portions	Defendants
Tapernoux Decl. Ex. M	Highlighted Portions	Defendants

3. Defendants do not believe the green-highlighted portions of the Response or Exhibits F, G, or H merit sealing, but Waymo designated this material "Highly Confidential – Attorneys' Eyes Only." Defendants file this material under seal in order to provide Waymo the opportunity to justify sealing pursuant to Local Rule 79-5, but oppose any attempt to seal this information.

4. The blue-highlighted portions of Exhibits J and M contain highly confidential information concerning the identity of certain third party competitors, specific research objectives, financial numbers regarding research budgets, and confidential business negotiations.

1 This information has been maintained as confidential. Disclosure of this information would allow
2 competitors to understand Uber's business strategy in the self-driving industry, including what
3 information Uber has and does not have, to the detriment of Uber's competitive standing.

4 5. The blue-highlighted portions on page 38 of Exhibit J and page 208 of Exhibit M
5 contain references to a confidential third party vendor Uber used to conduct open-source research.
6 Defendants request this information be sealed to protect this confidential business relationship
7 from disclosure and this third party vendor from possible harassment.

8 6. Defendants' request is narrowly tailored to portions that merit sealing.

9 I declare under penalty of perjury that the foregoing is true and correct. Executed this
10 14th day of January, 2018 at Washington, District of Columbia.

11
12 /s/ Michelle Yang

Michelle Yang

ATTESTATION OF E-FILED SIGNATURE

I, Arturo J. Gonzalez, am the ECF User whose ID and password are being used to file this Declaration. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Michelle Yang has concurred in this filing.

Dated: January 14, 2018

/s/ Arturo J. González

ARTURO J. GONZÁLEZ

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**[PROPOSED] ORDER GRANTING
DEFENDANTS UBER
TECHNOLOGIES, INC. AND
OTTOMOTTO LLC'S
ADMINISTRATIVE MOTION TO
FILE DOCUMENTS UNDER SEAL**

1 Upon consideration of Defendants Uber Technologies, Inc. and Ottomotto LLC's
2 ("Defendants") Administrative Motion to File Documents Under Seal, and finding that good
3 cause exists, this Court hereby GRANTS Defendants' Administrative Motion to File Documents
4 Under Seal and ORDERS that the following documents shall be sealed, as indicated below:

Document	Portions to Be Filed Under Seal
Tapernoux Decl. Ex. J	Highlighted Portions
Tapernoux Decl. Ex. M	Highlighted Portions

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10 **IT IS SO ORDERED.**

11 Dated: _____, 2018

12 HONORABLE WILLIAM ALSUP

13 United States District Judge
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NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING
LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DEFENDANTS UBER TECHNOLOGIES,
INC. AND OTTOMOTTO LLC'S RESPONSE
TO WAYMO'S PRECIS IN SUPPORT OF
ITS REQUEST TO FILE A MOTION FOR
RELIEF BASED ON DEFENDANTS'
LITIGATION MISCONDUCT**

Date: TBD
Time: TBD
Ctmm: 8, 19th Floor
Judge: Honorable William H. Alsup
Trial Date: February 5, 2018

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

Nothing in Waymo's 50-page offer of "proof" with five binders of exhibits warrants any sanction. Yet Waymo wants to file another motion to substitute sanctions for evidence—because it cannot prove its trade secret claims. That request should be denied. This case should be tried on its merits instead of unwarranted inferences based on irrelevant innuendo. The issues Waymo raises have been briefed extensively, and the Jacobs allegations do not provide any reason to brief them further. As Uber's response to Waymo's Offer of Proof will make clear, discovery into the Jacobs allegations has confirmed that there is nothing relevant to the eight trade secrets at issue. Enough is enough. It is time for Waymo to stop whining, and try its case.

I. TERMINATING SANCTIONS ARE NOT WARRANTED.

Waymo came to this Court with trumpets blaring, declaring that it had slam dunk evidence of trade secret theft. When discovery confirmed that was not true, Waymo decided to raise a series of excuses, based on false allegations of discovery and other abuses, designed to have this Court bail them out. This Court should not do so. Waymo obtained extensive discovery into the Jacobs allegations—17 depositions and over 16,000 pages of documents. None of this turned up any wrongdoing connected to Waymo, much less the specific trade secrets at issue. As Uber's response will show, no one in Uber's self-driving group engaged in the misconduct alleged by Jacobs, including the use of non-attributable devices, anonymous servers, or knowingly improper attorney-client privilege designations. There is simply no evidence that Waymo was prejudiced in any way because any relevant evidence was hidden or destroyed. FED. R. CIV. P. 37(e)(1).

The same is true of ephemeral messaging. Uber employees were instructed that if they were subject to a litigation hold, they should not use ephemeral communications to discuss anything covered by the hold. (Declaration of Camila Tapernoux Exhibits ("Exs.") A-D.) There is no evidence that ephemeral messaging was used for discussing anything relevant to this case. (Exs. C, E.) Moreover, Waymo employees have used ephemeral messaging as a matter of course since the company's founding, and Google employees have used it for a decade. (Ex. F.) Google's decision to default to ephemeral messaging arose because it [REDACTED] [REDACTED] (Ex. G.) Google has even argued in prior litigation (1) that a default setting to not retain chats comported with [REDACTED]

1 [REDACTED] and was [REDACTED]

2 (Ex. H, ¶ 8), as well as (2) that Google’s default “off-the-record” setting for its chat was not
 3 improper and did not support a finding of spoliation, because such chats were akin to “hallway
 4 conversation[s]” and the proper avenue for discovery regarding these messages was depositions.
 5 (Ex. I, *Function Media v. Google*, No. 2007-CV-279, No. 483 at 155:17-156:12 (E.D. Tex. Oct.
 6 21, 2010) (post-trial motions hearing on spoliation).) Like Uber, Google has instructed
 7 employees subject to an existing litigation hold to change individual chat settings to “on the
 8 record” for communications subject to a litigation hold. (Ex. H; Ex. I at 154:15-20.)

9 The precedent on which Waymo relies does not support sanctions. To the contrary, the
 10 relevant case law highlights that Waymo’s request is improper. First, a request for terminating
 11 sanctions may only be granted upon a finding of willfulness, bad faith, or fault—a standard
 12 Waymo tellingly fails to identify, let alone provide evidence of. *See Brookhaven Typesetting*
 13 *Serv., Inc. v. Adobe Sys., Inc.* 332 Fed. App’x 387, 389 (9th Cir. 2009) (“Where the drastic
 14 sanctions of dismissal or default are imposed ... the losing party’s noncompliance must be due to
 15 willfulness, fault, or bad faith.”) (affirming that terminating sanctions were not warranted);
 16 *Mitchell v. Acumed, LLC*, No. 11-CV-00752 SC (NC), 2012 WL 761705, at *2 (N.D. Cal. Mar. 8,
 17 2012 (“sanction orders taking the plaintiff’s allegations as established and awarding judgment on
 18 that basis are the most severe penalty To justify the imposition of such a harsh sanction, the
 19 court must find the violations were due to willfulness, bad faith, or fault of the party.”) (internal
 20 citations omitted); *Mech. Mktg., Inc. v. Sixxon Precision Mach. Co.*, No. C 11-1844 EJD PSG,
 21 2013 WL 1563251, at *2-3 (N.D. Cal. Apr. 12, 2013) (denying sanctions that “would have the
 22 effect of entering partial judgment for [plaintiff], at least on the issue of damages[,]” noting that a
 23 “terminating sanction is considered very severe and should only be imposed if the party acted
 24 with willfulness, bad faith, and fault.”) (internal citation omitted); *Network Appliance, Inc. v.*
 25 *Bluearc Corp.*, No. C 03-5665 MHP, 2005 WL 1513099, at *3 (N.D. Cal. June 27,
 26 2005), *aff’d*, 205 F. App’x 835 (Fed. Cir. 2006) (“the imposition of preclusive sanctions may be
 27 tantamount to dismissal of a plaintiff’s claims or entry of default judgment against a
 28 defendant. Under those circumstances . . . a showing of bad faith is required.”) (internal citation

omitted); *Nuance Commc'ns, Inc. v. ABBYY Software House*, No. C 08-02912 JSW (MEJ), 2012 WL 5904709, at *2 (N.D. Cal. Nov. 26, 2012) (denying jury instruction to take as established that defendant copied trade dress, which would be “tantamount to [granting] a directed verdict...”).

Waymo cannot make the requisite showing of bad faith. *See, e.g., Network Appliance*, 2005 WL 1513099 at *1 (denying sanctions upon finding of no bad faith where defendant did not produce responsive damages documents earlier because “its [CFO] had concluded that ... [they] were not responsive”). Even if it could, its request would fail upon consideration of the five factor balancing test. The “key factors are prejudice and availability of lesser sanctions.” *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990). As discussed above, Waymo has not suffered prejudice, especially to the extent reflected in cases where this factor weighed in favor of granting sanctions. Waymo has had the opportunity to conduct full discovery into the evidence at issue, which courts in this district agree is sufficient to remedy any potential prejudice from belated discovery. *Mitchell* 2012 WL 761705 at *3 (finding no prejudice from discovery delay because trial was continued); *Nuance Commc'ns, Inc. v. ABBYY Software House*, No. C 08-02912 JSW MEJ, 2012 WL 5904709, at *3 (N.D. Cal. Nov. 26, 2012) (denying motion for issue preclusion sanctions due to late productions where “a discovery extension would have alleviated any prejudice that was caused by Defendants’ malfeasance, and, most importantly, permitted the Court and a jury to resolve Plaintiff’s trade dress claims on the merits.”). Waymo has also not suffered prejudice because, as Uber’s Response to Waymo’s Offer of Proof will show, the evidence at issue was of minimal if any relevance. *Keithley v. Homestore.com, Inc.*, No. C-03-04447 SI (EDL), 2009 WL 55953, at *3 (N.D. Cal. Jan. 7, 2009) (denying sanctions due to finding of no prejudice where late-produced documents had “little if any relevance to [the] case”).

The cases on which Waymo relies to argue for prejudice are readily distinguishable. In *Valley Engineers Inc. v. Electric Engineering Co.*, the evidence at issue was a “smoking gun.” 158 F.3d 1051, 1054 (9th Cir. 2000). Here, as this Court has repeatedly observed, there is no smoking gun. No one in ATG used non-attributable devices or anonymous servers. While there was limited gathering of publicly-available information about Waymo, Waymo points to no evidence of any trade secret misappropriation—because there was none. (Tapernoux Decl., Exs.

J-M (Russo at 20:18-21:7, 37:20-38:18; Henley at 106:16-20, 107:15-23, 108:4-6; Nocon at 45:9-19; Gicinto at 145:12-19, 208:15-24, 281:16-282:16).) Additionally, the *Valley Engineers* court found that the severity of the defendant's conduct in hiding and lying about the document intentionally throughout the litigation warranted severe sanctions because it "so damage[d] the integrity of the discovery process that there [could] never be assurance of proceeding on the true facts." 158 F.3d at 1059. Similarly, in *Fair Housing of Marin v. Combs*, defendant "misrepresented to both counsel and to the district court that the documents did not exist" when in fact "[t]he documents were in Combs' one-bedroom apartment." 285 F.3d 899, 905-906 (2002) There is no such evidence here. Waymo also relies on *Fair Housing of Marin* and *Henry* for the proposition that a last-minute production does not cure prejudice. (Dkt. No. 2472 at 2-3.) But, unlike here, the parties in those cases did not have the opportunity to conduct discovery into the late-produced evidence. Waymo obtained extensive follow-up discovery here, and the cases cited above make clear that such an opportunity remedies any potential prejudice.

The availability of less drastic sanctions also weighs against granting terminating sanctions. Waymo's case, *Alexsam, Inc. v IDT Corp.*, 715 F.3d 1336 (Fed. Cir. 2013), applies a far more lenient standard from the Fifth Circuit. Further, in that case, the defendant had already received less drastic sanctions, yet continued to not comply with its obligations; it was then twice warned of the risk of future sanctions before the court granted terminating sanctions. *Id.* at 1344.

Waymo misleadingly claims that one of the continuances "has been determined to have resulted from the intentional concealment of evidence." (Dkt. No. 2472-3 at 2:19 (Waymo Precis).) There is no citation to any such "determination," nor could there be. And, the public policy favoring disposition of cases on their merits strongly outweighs the remaining factors here. Waymo should not be permitted to bypass the utter lack of evidence of misappropriation of the eight trade secrets at issue via a sanction based on meritless and exaggerated allegations.

II. REMEDIAL JURY INSTRUCTIONS ARE NOT NECESSARY.

This issue has already been extensively briefed. (*See* Dkt Nos. 1591-4, 2240-4, and 2804.) As noted there, and as will be discussed further in Uber's response to Waymo's Offer of Proof, Uber has not violated any Court Orders or destroyed evidence. Remedial jury instructions

1 are not warranted. Waymo should try its case on the merits and should not be permitted to use
2 irrelevant allegations to influence the jury into finding wrongdoing where there is none.

3 **III. EVIDENTIARY SANCTIONS ARE NOT WARRANTED.**

4 Waymo points to no specific concealment of evidence that has compromised its
5 evaluation of Uber's independent development such that evidentiary sanctions are warranted.
6 First, Uber substantially complied with its logging obligation. (Dkt. 1591-4 at 2 (Uber conducted
7 over 170 interviews, reviewed over 25,000 documents and spent over 700 hours preparing the
8 "LiDAR log," and voluntarily included references not just to LiDAR but to lasers, lenses, and
9 point clouds, as well as communications where others may have mentioned LiDAR and related
10 concepts to Mr. Levandowski.). Second, Uber legitimately asserted privilege over the Stroz
11 materials, and it was not in a position to unilaterally waive the privilege when Mr. Levandowski
12 continued to assert it. *United States v. Gonzalez*, 669 F.3d 974, 982 (9th Cir. 2012) ("the case law
13 is clear that one party to a JDA cannot unilaterally waive the privilege for other holders."). And
14 in another half-truth, Waymo complains that it did not receive the Stroz materials "until after the
15 close of fact discovery," but fails to mention that Mr. Levandowski, not Uber, appealed this
16 Court's ruling on that issue. Waymo also conveniently omits that it received ample discovery
17 into the Stroz diligence after the Federal Circuit ruled. Lastly, in a final half-truth, Waymo
18 complains that it was not able to question two Uber engineers (Mr. Haslim and Mr. Boehmke)
19 about the Stroz materials. But they fail to mention that they only requested to depose a different
20 engineer, Mr. Gruver, about the Stroz materials. Waymo never asked to depose Mr. Haslim or
21 Mr. Boehmke after the Stroz report was released.

22 **IV. ADDITIONAL TIME AT TRIAL IS NOT WARRANTED.**

23 Waymo should not be given additional time at trial to do nothing more than present more
24 baseless allegations of discovery misconduct in an effort to mislead the jury into thinking Waymo
25 has an actual case. Nothing has emerged from the Jacobs letter that warrants inclusion at trial, as
26 discussed above and as will be detailed in Uber's response to Waymo's Offer of Proof. The
27 remaining factors to which Waymo points—the due diligence process and the Ottomotto and Tyto
28 transactions—were known when the Court set the initial time allocations that Waymo agreed to.

1 Dated: January 14, 2018

MORRISON & FOERSTER LLP

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3 By: /s/ Arturo J. González

4 ARTURO J. GONZÁLEZ

5 Attorneys for Defendants
6 UBER TECHNOLOGIES, INC. and
7 OTTOMOTTO LLC
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,)
Plaintiff,)
v.) Case No.
UBER TECHNOLOGIES, INC.;) 3:17-cv-00939-WHA
OTTOMOTTO LLC;)
OTTO TRUCKING,)
Defendants.)
-----)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF EDWARD RUSSO
WEDNESDAY, DECEMBER 20, 2017

REPORTED BY:
PAUL J. FREDERICKSON, CCR, CSR
JOB NO. 2771335

PAGES 1 - 367

1 surveillance? Do you know? 08:17:37

2 A. I don't. 08:17:38

3 Q. Did you ever see a report about 08:17:39

4 it? 08:17:40

5 A. I did not. 08:17:41

6 Q. Did you talk to anyone about it? 08:17:41

7 A. Nick Gicinto told me, you know, 08:17:43

8 this was something that had taken place, and 08:17:45

9 I -- I forget the dates, but it would have been 08:17:47

10 in the spring, I guess, of 2016. 08:17:49

11 Q. Okay. 08:17:51

12 And what was the context of him 08:17:53

13 telling you that? Why -- why was he telling 08:17:54

14 you that? 08:17:56

15 A. Just to inform me on some of the 08:17:57

16 stuff that had -- the team had done prior to my 08:17:59

17 arrival. 08:18:02

18 Q. Other than the surveillance of 08:18:09

19 [REDACTED] that happened on two separate occasions 08:18:10

20 -- 08:18:10

21 A. Right. 08:18:13

22 Q. -- and the surveillance of Waymo 08:18:14

23 in Arizona and the surveillance of [REDACTED] that 08:18:16

24 you mentioned, are there any other instances 08:18:19

25 that you're aware of, whether you're personally 08:18:20

1 aware of it or because you heard from someone 08:18:23
2 else, of any surveillance that Uber did of 08:18:25
3 competitors? 08:18:29
4 A. No. 08:18:29
5 Q. You haven't heard anything else; 08:18:30
6 right? 08:18:31
7 A. No. 08:18:31
8 Q. And explain to me the context or 08:18:35
9 the purpose of the due diligence surveillance 08:18:38
10 that was done in connection with [REDACTED]. 08:18:41
11 A. It was my understanding that ATG 08:18:46
12 was [REDACTED] 08:18:48
13 [REDACTED] 08:18:52
14 [REDACTED] 08:18:57
15 ATG's -- Mr. Levandowski, Mr. Ron 08:19:03
16 had asked for certain -- for [REDACTED] to provide 08:19:06
17 certain things so they could assess the 08:19:07
18 technology to determine whether this would be a 08:19:09
19 wise business decision on -- on Uber's part. 08:19:11
20 Apparently [REDACTED] was not 08:19:14
21 forthcoming to their -- to their liking. 08:19:16
22 They -- they felt they were -- they lacked the 08:19:20
23 information they needed. So they asked us if 08:19:23
24 we could videotape one of their cars so they 08:19:25
25 could get a sense of how good the technology 08:19:28

1 Q. Of 2017? 08:33:57

2 A. Yes. 08:33:57

3 Q. The surveillance that happened at 08:34:07

4 Waymo in Arizona, can you tell me how that 08:34:09

5 arose? 08:34:11

6 A. To be perfectly honest, I'm less 08:34:15

7 clear on the genesis of that. After we did the 08:34:17

8 [REDACTED] surveillance and provided the videos, 08:34:20

9 about a week later, if I remember correctly, 08:34:25

10 Mr. Gicinto called me and said that 08:34:29

11 Mr. Levandowski and Mr. Ron would be interested 08:34:31

12 in similar videos of the Waymo cars in Arizona. 08:34:34

13 Q. You said a week after the [REDACTED] 08:34:40

14 surveillance. Were you referring to the 08:34:42

15 March -- 08:34:44

16 A. Yes. 08:34:45

17 Q. -- 2017 surveillance? 08:34:45

18 A. Yeah, the March. Because we -- we 08:34:47

19 did the Waymo videotaping in mid April. 08:34:49

20 Q. What did Mr. Gicinto tell you the 08:34:59

21 purpose of getting videos of the Waymo cars in 08:35:03

22 Arizona was? 08:35:06

23 A. As I recall, it was just that 08:35:08

24 Mr. Levandowski and Mr. Ron were interested in 08:35:11

25 videos of Waymo cars. I -- I was unaware of a 08:35:14

1 bigger purpose behind it. 08:35:17

2 Q. And what did you do in connection 08:35:19

3 with doing that surveillance of Waymo cars in 08:35:21

4 Arizona? 08:35:23

5 A. Same as I just described with 08:35:25

6 [REDACTED]. Jake Nocon, myself went down. One of 08:35:27

7 the [REDACTED] came down or contractors came 08:35:31

8 down, and we videotaped the Waymo cars. 08:35:35

9 Q. How long did that project last? 08:35:51

10 A. Three or four days. 08:35:53

11 Q. Did you get any feedback from 08:35:57

12 Mr. Ron or Mr. Levandowski or Mr. Gicinto or 08:36:02

13 anyone else about the video that you took 08:36:06

14 there? 08:36:07

15 A. As I recall, the -- I mean, they 08:36:11

16 were happy we had the video, but I mean, there 08:36:13

17 was no specific -- specific comments that I 08:36:15

18 remember. 08:36:17

19 Q. Do I understand correctly that 08:36:23

20 from August of 2016 when you were hired at Uber 08:36:24

21 and March of 2017, you're not aware of any 08:36:28

22 surveillance activities that Uber engaged? 08:36:32

23 A. Other than the one I just -- we 08:36:37

24 talked about that took place before my being 08:36:39

25 hired there, right, yeah. I'm -- 08:36:41

1 Q. You're referring to [REDACTED]? 08:36:42
2 A. The [REDACTED], yeah. 08:36:45
3 Q. Other than that, you're not aware 08:36:46
4 of anything? 08:36:47
5 A. I'm not aware of anything. 08:36:48
6 [Discussion off the record.] 08:37:01
7 Q. I should have given you that 08:37:02
8 caveat at the beginning. 08:37:04
9 A. It's okay. 08:37:06
10 Q. In terms of the research that you 08:37:24
11 mentioned of third parties -- third-party 08:37:26
12 competitors -- 08:37:28
13 A. Yes. 08:37:31
14 Q. -- did you or are you aware of 08:37:31
15 anyone else at Uber ever attempting to gather 08:37:34
16 that research by speaking to individuals who 08:37:39
17 were employed at these third parties? 08:37:43
18 A. Say that question again now. 08:37:50
19 Q. Sure. 08:37:51
20 Did you or are you aware of anyone 08:37:56
21 else at Uber ever attempting to gather research 08:37:59
22 about competitors of Uber by speaking to 08:38:04
23 individuals who were employed at those 08:38:08
24 competitors? 08:38:11
25 A. No. 08:38:14

1 Witness my hand this 21st day
2 of December 2017.

3
4 
5

6 PAUL J. FREDERICKSON, CCR, CSR

7 WA CCR 2419 CA CSR 13164

8 Expiration date: March 31, 2018
9

EXHIBIT M

REDACTED VERSION

OF DOCUMENT

SOUGHT TO BE SEALED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 3:17-cv-00939-WHA

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.;

OTTOMOTTO LLC;

OTTO TRUCKING,

Defendants.

HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF

NICHOLAS GICINTO

DATE TAKEN: DECEMBER 21, 2017

REPORTED BY:

PAUL J. FREDERICKSON, CCR, CSR

JOB NO. 2771353

Pages 1 - 338

Page 1

1 A. It appears to be a philosophical 13:18:30
2 approach to looking at the autonomous vehicle 13:18:33
3 competitive landscape and -- from a collection 13:18:37
4 standpoint. 13:18:41

5 Q. And do you see in the next 13:18:42
6 paragraph, it says: 13:18:43

7 "The primary collection 13:18:44
8 methodologies will be open-source and HUMINT 13:18:45
9 and will be conducted by assets, both internal 13:18:48
10 employees and external vendors"? 13:18:52

11 A. I see that. 13:18:54

12 Q. And did you have understanding 13:18:56
13 that Uber's primary collection methodologies in 13:18:59
14 terms of gaining competitive intelligence were 13:19:06
15 the things that are listed here? 13:19:07

16 A. No, I disagree with that. I mean, 13:19:12
17 this strategy or this -- this document here, 13:19:13
18 what was outlined, was never actually carried 13:19:17
19 out. 13:19:21

20 Q. You haven't read the whole 13:19:21
21 document yet, have you? 13:19:22

22 A. I haven't read the whole document, 13:19:23
23 but insofar as what you've pointed out to me, 13:19:25
24 these are not things that were -- that were 13:19:28
25 undertaken. 13:19:30

1 And one of the individuals -- the 14:37:28
2 first individual we interacted with as a 14:37:33
3 vendor, who we later called [REDACTED], traveled to 14:37:38
4 [REDACTED] in response to the requirements that Ric 14:37:41
5 Jacobs drafted. 14:37:45

6 The information itself wasn't -- 14:37:45
7 wasn't particularly earth-shattering, but the 14:37:49
8 quality of the writing, the quality of the 14:37:54
9 assessment, was at such a higher level of -- of 14:37:57
10 what -- what the business was used to seeing, 14:38:01
11 that it was clear that we were working with a 14:38:04
12 vendor that had just a higher level of 14:38:07
13 expertise than what the business had been used 14:38:11
14 to working with. 14:38:13

15 Q. Other than what we've discussed 14:38:14
16 today with respect to the surveillance of [REDACTED] 14:38:16
17 and Waymo vehicles, are there any other 14:38:20
18 activities you can recall that were engaged in 14:38:24
19 by these folks that you call [REDACTED] that were 14:38:28
20 hired by your group with respect to collecting 14:38:32
21 information about competitors in the AV market? 14:38:39

22 A. I don't recall those individuals 14:39:07
23 engaging in any other collection related to AV 14:39:11
24 besides what we previously discussed. 14:39:14

25 MR. KAPGAN: Do you want to take a 14:39:16

1 chain category? 16:58:02

2 A. Hypothetically it would have been 16:58:05

3 for that. But, again, we didn't engage in 16:58:07

4 supply chain research, so none of the money 16:58:09

5 went to that. We did engage in some sourcing 16:58:11

6 activities, as I mentioned, related to a couple 16:58:14

7 of entities, neither of which were Waymo or 16:58:18

8 Google. 16:58:22

9 Q. Did the ATG group specify that 16:58:26

10 efforts should be taken with respect to [REDACTED] 16:58:28

11 [REDACTED] with 16:58:31

12 respect to the autonomous vehicle competitors? 16:58:33

13 A. They listed those as areas of 16:58:36

14 interest. 16:58:37

15 Q. All right. 16:58:40

16 Was any money out of the [REDACTED] 16:58:50

17 [REDACTED] budget spent on focusing on 16:58:52

18 Google with respect to the [REDACTED]? 16:58:57

19 A. No. 16:58:57

20 Q. Was any of the [REDACTED] 16:59:00

21 budget focused on Google with respect to 16:59:02

22 [REDACTED]? 16:59:06

23 A. No. 16:59:06

24 Q. Was any of the [REDACTED] 16:59:08

25 budget that was approved for 2017 focused on 16:59:10

1 Google with respect to [REDACTED]? 16:59:15

2 A. Yes. 16:59:15

3 Q. Tell me what you know about that. 16:59:21

4 A. The -- this budget funded our 16:59:24

5 public observation activities in the Phoenix 16:59:27

6 area as we previously discussed. 16:59:30

7 Q. And is that the only activity with 16:59:32

8 respect to Google that was -- which came under 16:59:35

9 this [REDACTED] budget? 16:59:42

10 A. Yes. 16:59:42

11 Q. Was there any other budget in the 16:59:45

12 SSG Group that related to activities focused on 16:59:47

13 Google for 2017? 16:59:49

14 A. No. 16:59:51

15 Q. What about for 2016? 16:59:51

16 A. No. 16:59:51

17 Q. Was all of the budget for 2000 -- 17:00:09

18 first of all, how much budget was there for 17:00:10

19 2016 with respect to autonomous vehicles in 17:00:13

20 your group? 17:00:15

21 A. We didn't have a budget. We 17:00:16

22 weren't funded by ATG in 2016. 17:00:18

23 Q. Okay. 17:00:20

24 You didn't have a budget at all? 17:00:23

25 A. I had a -- I had a budget, but I 17:00:24

C E R T I F I C A T E

I, PAUL J. FREDERICKSON, CA
Certified Shorthand Reporter No. 13164 and
WA Certified Court Reporter No. 2419, do
hereby certify:

That prior to being examined,
the witness named in the foregoing
deposition was by me duly sworn or affirmed
to testify to the truth, the whole truth and
nothing but the truth;

That said deposition was taken
down by me in shorthand at the time and
place therein named, and thereafter reduced
to print by means of computer-aided
transcription; and the same is a true,
correct and complete transcript of said
proceedings.

I further certify that I am not
interested in the outcome of the action.

Witness my hand this 22nd day
of December 2017.



PAUL J. FREDERICKSON, CCR, CSR
WA CCR 2419 CA CSR 13164
Expiration date: March 31, 2018